

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	

**COMMENTS OF NTCA-THE RURAL BROADBAND ASSOCIATION
ON
APPLICATIONS FOR REVIEW AND REQUESTS FOR CLARIFICATION**

To the Commission:

NTCA–The Rural Broadband Association (NTCA) hereby submits comments on applications for review and requests for clarification filed in the above-captioned proceeding.¹ Although pursuant to Commission rules this stage in the pleading cycle would accommodate "Replies to Opposition to Applications for Review,"² NTCA notes that *no party filed in opposition* to its Application, and the Wireless Internet Service Providers Association (WISPA) filed comments *in support* of positions argued by NTCA. Accordingly, NTCA urges the Commission to grant the relief requested by NTCA.

In its Application, NTCA explained, *inter alia*, that the newly-adopted regulations require providers to test the performance of networks that they neither own nor control and requested the Commission to modify that requirement to limit performance testing obligations only to network segments that are reasonably within the rural provider's control. Critically, while NTCA

¹ *Application for Review of NTCA–The Rural Broadband Association* (Sep. 19, 2018) (Application).

² *See*, 47 C.F.R. § 1.115.

ultimately welcomes measures intended to ensure accountability in performance of networks that leverage universal service support,³ NTCA reiterated that *any* testing requirements be deferred until such time as equipment that enables rural providers to complete testing in an economically reasonable and administratively efficient manner is available. In presenting this argument, NTCA relied upon numerous inquiries made to rural providers and network engineers, whose responses revealed (and continue to reveal) the lack of suitable equipment on a widespread basis in the marketplace.⁴ These positions were affirmed last week by WISPA.

WISPA, which like NTCA represents small providers, would confront challenges similar to those faced by members of NTCA in meeting the Commission's obligations. WISPA noted, "As has been the case in other various contexts, smaller providers are disproportionately impacted when implementing regulatory requirements that involve the purchase and installation of new equipment or the retrofitting of equipment that is already operational."⁵ In the instant matter, the disproportionate impacts are amplified by the still-developing nature of the marketplace for necessary equipment.

In addition to supporting to administrative concerns raised by NTCA, WISPA also concurred that the costs of testing must contemplate both financial and intangible costs of identifying and then convincing customers to participate in testing; this is especially relevant where testing is accomplished with the use of an "add-on" device that requires the initiation of

³ NTCA addressed these issues comprehensively in comments in the underlying proceeding, including "the imperative of determining busy hour offered load (BHOL) information" in critical so-called "prime-time" hours. *See, Comments of NTCA* at 15 (filed Dec. 6, 2017).

⁴ *See, NTCA Application for Review* at 9-13.

⁵ Comments of the Wireless Internet Service Providers Association on Applications for Review, at 1, 2 (Oct. 4, 2018) (WISPA).

customer contact, customer consent, and a truck-roll to install the device. As WISPA noted, customers may decline participation when "they learn that the equipment is not for their benefit but rather to comply with federal government regulation."⁶ NTCA concurs that enabling the broadband provider's compliance with government regulations is most likely not among the "inducements" the Commission predicted might be necessary to encourage subscriber participation in testing.⁷

In addition to the explicit support provided by WISPA for these positions, NTCA also notes that in a proceeding in which 20 parties combined to file 11 separate sets of comments, no party filed comments in opposition to other aspects of NTCA's Application, including: limiting testing to network segments over which small providers exert reasonable control or, in the alternative, to provide a "safe harbor" or designation of additional Internet Exchange Points (IXPs); reducing the number of locations at which small providers must test; and the several issues on which NTCA requested clarification. NTCA therefore submits that its positions are acceptable to the interested parties who presumably are, by virtue of their participation in the underlying proceeding, most affected by the regulations. Accordingly, this implicit consensus should inform the Commission's favorable disposition of the Application for Review.

⁶ WISPA at 3.

⁷ *Measurements Order* at para. 40.

WHEREFORE the reasons stated herein and above, NTCA requests the Commission to grant fully the relief request in its Application for Review and Request for Clarification.

Respectfully submitted,

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